

**REMARKS**

**Allowable Subject Matter**

Applicants appreciate the Examiner's acknowledgment that the subject matter of claims 4, 6, 9-10, 15, 17, 20, 21, 24, 26, 28, 30, 33, 34 and 36 is allowable when amended and placed into independent form. However, Applicants submit that these claims as well as their respective independent and intervening claims are allowable without such amendment for at least the following reasons.

**The §103 Rejections**

Claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22, 23, 25, 27, 29, 31, 32 and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of previously cited U.S. Patent No. 4,670,899 to Brody et al ("Brody") in view of newly cited U.S. Patent No. 6,792,275 to Lo et al ("Lo"). The Applicants respectfully disagree and traverse these rejections for at least the following reasons.

In the Office Action the Examiner takes the position that Brody discloses the claimed steps of: (a) calculating a first balancing metric based on an operating characteristic of said first layer, and (b) calculating a second balancing metric based on an operating characteristic of said second layer; but does not disclose the claimed step of (c) adjusting said transmission characteristic

threshold in response to the value of said first balancing metric relative to said second balancing metric.

To make up for this deficiency in Brody the Examiner relies on Lo.

The Applicants respectfully disagree. Initially the Applicants note that, contrary to the Examiner's position, Brody does not disclose at least steps (b) *and* (c) while Lo does not disclose at least step (c).

Turning first to Brody, all of Brody's values/thresholds are based on the characteristics of the same layer, not two different layers, i.e., the claimed first and second layers, as in the claims of the present invention. Thus, Brody does not disclose nor suggest step (b). Because of this, as the Examiner acknowledges, Brody cannot adjust a transmission characteristic threshold in response to the value of a first layer's balancing metric relative to a second layer's balancing metric (i.e., step (c)) because Brody's values/thresholds relate only to the same layer.

Turning now to Lo, contrary to the Examiner's statement in the Office Action Lo does not disclose the adjustment of a transmission characteristic threshold "in response to the value of [a] first balancing metric relative to [a] second balancing metric". Instead, Lo adjusts its macro- and micro-cell performance thresholds based on a "Sugeno displacement gradient". As far as Applicants can determine a Sugano displacement gradient is specific to "fuzzy

logic” approximation techniques that do not involve the adjustment of a threshold upon comparison of two different balancing metrics, i.e., step (c).

Because the combination of Brody and Lo does not disclose or suggest steps (b) and (c) set forth above, the Applicants respectfully submit that the subject matter of claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22, 23, 25, 27, 29, 31, 32 and 35 would not have been obvious to one of ordinary skill in the art at the time the present application was filed based on reading the disclosures of Brody and Lo.

Accordingly, the Applicants respectfully request withdrawal of the rejections and allowance of claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22, 23, 25, 27, 29, 31, 32 and 35.

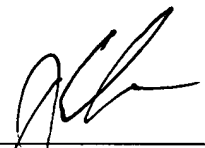
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC.

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John E. Curtin, Reg. No. 37,602  
P.O. Box 1995  
Vienna, Virginia 22183  
(703) 266-3330